

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MIDLAND INNOVATIONS, NV,

MC 07-80257 CW

Plaintiff,

ORDER ADOPTING  
MAGISTRATE JUDGE'S  
REPORTS AND  
RECOMMENDATIONS  
AND DENYING MOTION  
TO EXPAND RECORD  
(Docket Nos. 99  
and 100)

v.

WEILAND INTERNATIONAL INC., et  
al.,

Defendants.

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The Court has reviewed Magistrate Judge Vadas's four Reports and Recommendations regarding: (1) Enjoining the Levying Officer From Releasing Real Property Levied Under a Writ of Execution (Docket No. 86); (2) Denying Third Party Claim of Weiping Chen (Docket No. 87); (3) Sustaining Objection to Undertaking filed by Third Party Weiping Chen (Docket No. 88); and (4) Sale of Dwelling (Docket No. 89), as well as Third Party Weiping Chen's objections thereto and Judgment Creditor Midland Innovations' opposition to the objections. The Court finds the Reports to be correct and adopts the Recommendations.

BACKGROUND

This case arises from a default judgment entered in the Southern District of New York against Judgment Debtor Wen Wang for patent infringement damages, the amount of which, with accrued interest, has accumulated to a sum exceeding \$1.3 million. On November 8, 2007, Judgment Creditor Midland Innovations, NV registered the New York judgment in this Court. On January 14, 2008, Judgment Creditor recorded an abstract of judgment on a

1 house in Dublin, California, which is recorded as purchased on May  
2 19, 2005 by Judgment Debtor Wang and Third Party Chen as husband  
3 and wife. Title to the property was taken as community property  
4 with right of survivorship. See Docket No. 53, Ex. B.

5 In March 2014, this Court issued a renewed abstract of  
6 judgment in the amount of \$1.385 million and Judgment Creditor  
7 filed motions for judgment debtor examinations as to Judgment  
8 Debtor Wang and Third Party Chen. Docket Nos. 8, 9. On March 31,  
9 2014, the undersigned referred the post-judgment collections  
10 matters to Magistrate Judge Vadas. Docket No. 10.

11 On April 22, 2014, at the request of Judgment Creditor, the  
12 Levying Officer, the United States Marshals Service, levied on the  
13 Dublin property under a Writ of Execution issued on January 13,  
14 2014 to foreclose on Midland's judgment lien created by the  
15 January 14, 2008 Abstract of Judgment.

16 On May 13, 2014, the Levying Officer served Judgment Creditor  
17 with notice that Chen had filed a Third Party Claim pursuant to  
18 California Code of Civil Procedure section 720.110. On May 28,  
19 2014, Judgment Creditor filed an undertaking with the Levying  
20 Officer pursuant to California Code of Civil Procedure section  
21 720.160.

22 On June 5, 2014, Judgment Creditor filed an Application for  
23 Order for Sale of Dwelling with respect to the Dublin property.  
24 Judge Vadas held a hearing on the application on July 17, 2014.  
25 Judge Vadas took the application under submission to allow Third  
26  
27  
28

1 Party Chen and Hongdi Ren<sup>1</sup> to retain counsel and file papers in  
2 opposition to the application.

3 On July 21, 2014, Judgment Creditor received notice by mail  
4 from the Levying Officer that, on June 12, 2014, Third Party Chen  
5 had filed an undertaking with the Levying Officer pursuant to  
6 California Code of Civil Procedure section 720.630.

7 Between July 22 and August 1, 2014, Judgment Creditor filed  
8 three additional motions: a petition for hearing on Chen's third  
9 party claim, an ex parte application for an emergency order  
10 enjoining the Levying Officer from releasing the Dublin property,  
11 and a motion objecting to the undertaking filed by Third Party  
12 Chen. On July 29, 2014, Judge Vadas granted the ex parte  
13 application and enjoined the release of the Dublin property  
14 pending further order of the court.

15 In their oppositions to the motions, Third Party Chen and Ren  
16 argued that Third Party Chen was never married to Judgment Debtor  
17 Wang and that Third Party Chen's father provided the funds for the  
18 purchase of the Dublin property. Third Party Chen also offered,  
19 as an exhibit to her declaration, a purported May 25, 2005  
20 agreement between herself and Judgment Debtor Wang, stating that  
21 (1) Chen paid for the Dublin property in full; (2) the parties  
22 agreed to take title to the property as husband and wife, but that  
23 Wang was not entitled to any share of the property until Wang and  
24 Third Party Chen married; (3) if Wang and Chen married, they would  
25 jointly own the property from the time of the marriage; (4) if  
26 they did not marry, Chen would own the property alone and would

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27 <sup>1</sup> Ren is Judgment Debtor Wang's mother. As discussed below,  
28 her name is on the most recently recorded title to the Dublin  
property.

1 have the right to sell or transfer the property; and (5) if they  
2 married and divorced, Chen would own the property alone from the  
3 date of the divorce. Docket No. 30, Ex. 3.

4 Third Party Chen and Ren also asserted that, in late 2007,  
5 after it became clear that Judgment Debtor Wang did not intend to  
6 marry Chen, Wang's mother Ren approached Chen, stating that she  
7 was interested in buying a fifty percent share in the Dublin  
8 property. Third Party Chen declared that she estimated that the  
9 property was worth approximately one million dollars, so she  
10 agreed to sell a fifty percent share of the property to Ren for  
11 \$500,000. Although Ren was not able to pay the full amount, she  
12 and Third Party Chen agreed that Ren would make installment  
13 payments to Chen's father. Ren's declaration attached a copy of a  
14 check in the amount of \$13,300, made out to Third Party Chen,  
15 which Ren and Chen represent was her first payment. According to  
16 Third Party Chen, as of July 30, 2014, Ren had paid approximately  
17 \$300,000 toward the amount promised. On February 19, 2008,  
18 shortly after the original abstract of judgment was recorded on  
19 the house, a Grant Deed was recorded in which Judgment Debtor Wang  
20 and Third Party Chen transferred their community property right of  
21 survivorship interests in the Dublin property to Chen and Judgment  
22 Debtor Wang's mother Ren as tenants in common. The Grant Deed  
23 indicated that the transfer was a gift and not pursuant to a sale.  
24 Docket No. 53, Ex. D. Accordingly the parties to the transfer did  
25 not pay any transfer taxes.

26 In response, Judgment Creditor argued that Third Party Chen  
27 and Ren's declarations were not credible because Third Party Chen  
28 and Judgment Debtor Wang took title to the Dublin property as  
husband and wife and as community property with right of

1 survivorship. In addition, Judgment Creditor produced evidence  
2 that, as early as 2000, Third Party Chen and Judgment Debtor Wang  
3 had taken title to real property in New Jersey as "husband and  
4 wife." Moreover, Judgment Creditor noted that the February 2008  
5 recording of the transfer of property from Judgment Debtor Wang  
6 and Third Party Chen to Ren and Chen as a gift was inconsistent  
7 with the claimed payments from Ren to Chen.

8 On August 22, 2014, Judge Vadas issued the four reports and  
9 recommendations to which Third Party Chen now objects: (1) a  
10 recommendation that the Court enjoin the Levying Officer from  
11 releasing real property pending additional orders of the Court;  
12 (2) a recommendation that the Court deny Chen's third party claim;  
13 (3) a recommendation that the Court sustain Judgment Creditor's  
14 objection to the undertaking filed by Chen; and (4) a  
15 recommendation that the Court order the sale of the Dublin  
16 property.

#### 17 LEGAL STANDARD

18 When a party files a timely objection to a magistrate judge's  
19 report and recommendation, the district court must "make a de novo  
20 determination of those portions of the report or specified . . .  
21 recommendations to which objection is made," and "may accept,  
22 reject, or modify, in whole or in part, the findings or  
23 recommendations made by the magistrate." 28 U.S.C.  
24 § 636(b)(1)(c); see also Fed. R. Civ. P. 72(b)(3).

#### 25 DISCUSSION

26 I. Motion to Expand the Record and Introduce of New Arguments

27 Along with her objections to Judge Vadas's Reports and  
28 Recommendations, Third Party Chen seeks to expand the record with  
additional evidence and to introduce new arguments regarding

1 jurisdiction, abstention and the Eighth Amendment not raised  
2 before the magistrate judge. Judgment Creditor argues that the  
3 introduction of new evidence and arguments is improper.

4 A. Newly Presented Evidence

5 The Ninth Circuit has held that "a district court has  
6 discretion, but is not required, to consider evidence presented  
7 for the first time in a party's objection to a magistrate judge's  
8 recommendation." United States v. Howell, 231 F.3d 615, 621 (9th  
9 Cir. 2000). When issuing the reports and recommendations at issue  
10 in this order, Judge Vadas rejected declarations submitted by Chen  
11 and Ren. Judge Vadas struck the declarations because they failed  
12 to comply with Civil Local Rule 5-1(i)(3). He also noted that the  
13 declarations "reflect perjury and fraud on their part" and  
14 characterized them as "self-serving and not credible." See, e.g.,  
15 Docket No. 86 at 5. Indeed, referring to the initial recording of  
16 the purchase of the property as community property with right of  
17 survivorship, counsel for Chen stated, "I will admit that they did  
18 lie in the grant deed." Hearing Transcript at 26.

19 Among the bases for Judge Vadas's concerns about the  
20 reliability of the declarations were counsel's acknowledgment of  
21 Wang and Chen's dishonesty when originally purchasing the property  
22 and the evidence of dishonesty created by the recording document  
23 which indicated that Wang and Chen were giving part of the  
24 interest in the Dublin property to Ren, contrasted with the claim  
25 that Ren was expected to and did pay for the interest.

26 Chen now seeks to augment the record to present (1) a  
27 properly signed version of her declaration, including additional  
28 documents that she asserts support her contention that she and  
Wang were never married; (2) a declaration from her father,

1 Zuxiang Chen; and (3) a request for judicial notice attaching  
2 various documents she contends are necessary to support her new  
3 arguments regarding jurisdiction and abstention.

4 1. Chen's Declaration

5 The Court declines to augment the record to accept Chen's new  
6 declaration. The credibility and authenticity concerns that  
7 existed when most of the information contained in the declaration  
8 was presented to Judge Vadas still exist. Moreover, the new  
9 exhibits, a certificate of naturalization from September 2003  
10 indicating that Chen was divorced at the time and a 2004 federal  
11 tax return indicating that Chen filed her personal income tax  
12 return as a head of household and not as married, are not relevant  
13 to whether Wang and Chen were married at the time they took title  
14 to the Dublin property on May 19, 2005. A person is eligible to  
15 file her federal tax return as head of household if she is  
16 unmarried or "considered unmarried" as of the last day of the tax  
17 year. Accordingly, to the extent the 2004 tax return is evidence  
18 of Chen's marital status, it is only relevant as to her status on  
19 December 31, 2004. Moreover, individuals can be "considered  
20 unmarried" for purposes of head of household status even when they  
21 are married. See 26 U.S.C. § 2.

22 2. Zuxiang Chen's declaration

23 The Court also declines to augment the record to accept the  
24 declaration of Chen's father, Zuxiang Chen. The declaration  
25 contains discussion of Zuxiang Chen's intention, when he allegedly  
26 funded the purchase of the Dublin property, that Judgment Debtor  
27 Wang only have an interest in the property if he married and  
28 stayed married to Chen. However, this declaration is similarly  
self-serving for the Chen family, and Zuxiang Chen's intentions

1 with respect to his gift are not relevant to whether Wang and Chen  
2 were married at the time they took title to the Dublin property on  
3 May 19, 2005.

4 3. Documents Related to Jurisdiction and Abstention

5 The Court further declines to augment the record to permit  
6 the introduction of evidence to support Chen's arguments that  
7 (1) the Court lacks subject matter jurisdiction over her and  
8 (2) the Court should dismiss or stay this action under the  
9 doctrine of abstention. As discussed below, the Court finds that  
10 these arguments fail as a matter of law. Accordingly, augmenting  
11 the record with these additional documents would not aid in the  
12 resolution of the present motion.

13 B. New Arguments not Raised before Judge Vadas

14 1. Jurisdiction

15 Chen first argues that this Court lacks jurisdiction over her  
16 because she was not a party to the New York action which led to  
17 the judgment on which Judgment Creditor is trying to collect.  
18 Accordingly, Chen argues that the Court cannot collect any portion  
19 of the judgment from her, including the proceeds of a forced sale  
20 of the Dublin property. However, to succeed on this argument,  
21 Chen must demonstrate that she and Wang did not jointly own the  
22 Dublin property in January 2008, when the abstract of judgment was  
23 recorded. As discussed above, Judge Vadas found that all evidence  
24 that Wang and Chen were not married at that time lacked  
25 credibility and was unreliable because it was self-serving. The  
26 Court similarly discounts that evidence. Accordingly, Chen's  
27 jurisdiction argument fails as a matter of law.  
28



## 2. Abstention

Chen next argues that the Court should dismiss or stay this case based on two pending Alameda County Superior Court cases. One case, Midland Innovations, NV v. Wang, Alameda County Superior Court Case No. RG 13 706542, was filed on December 12, 2013. In that case, Midland asserts a claim of intentional fraudulent transfer based on the 2008 transfer of the Dublin property from Wang and Chen to Ren and Chen. The other, Chen v. Wang, et al., Alameda County Superior Court Case No. RG 14 739421, was filed on September 5, 2014. In that case, Chen asserts a quiet title claim against Judgment Debtor Wang, Ren and Judgment Creditor.

Chen first asserts that the Midland v. Wang requires abstention under Younger v. Harris, 401 U.S. 37 (1971), because there is an ongoing state judicial proceeding that implicates an important state interest and provides a full and fair opportunity to litigate Judgment Creditor's interest. However, Judgment Creditor's Alameda County action does not involve an important state interest, and Chen provides no authority to support a finding that it does. Accordingly, the Court finds that Chen's Younger abstention argument fails as a matter of law. To the extent Chen asserts that her Alameda County action requires abstention under Younger, it was not an "ongoing state judicial proceeding" because it was not filed until after Judge Vadas entered the orders currently at issue.

Chen next asserts that abstention is required under Burford v. Sun Oil Co., 319 U.S. 315 (1943). In the Ninth Circuit, Burford abstention is justified when "(1) the state has concentrated suits involving the local issue in a particular court; (2) the federal issues are not easily separable from

1 complicated state law issues with which the state courts may have  
2 special competence; and (3) federal review might disrupt state  
3 efforts to establish a coherent policy.” Poulos v. Caesars World,  
4 Inc., 379 F.3d 654, 671 (9th Cir. 2004) (internal quotation marks  
5 omitted). Burford abstention is improper where state law provides  
6 for judicial review in any state court of general jurisdiction  
7 rather than concentrating review in a specialized court. See  
8 Kirkbride v. Continental Casualty Co., 933 F.2d 729, 734 (9th Cir.  
9 1991) (“[T]he fact that California has not established a  
10 specialized court system to resolve disputes over insurance policy  
11 coverage convinces us that application of the Burford doctrine to  
12 this case is unwarranted.”). Here, the only state law issue is  
13 whether Wang and Chen owned the Dublin property as community  
14 property. Chen provides no evidence that there is a specialized  
15 court system to resolve disputes over such issues. Accordingly,  
16 Burford abstention is not warranted.

17 Chen also argues that abstention is required under Colorado  
18 River Water Conservation District v. United States, 424 U.S. 800  
19 (1976). Generally, federal courts have a “virtually unflagging  
20 obligation” to exercise the jurisdiction conferred upon them. Id.  
21 at 817. “Unlike . . . other forms of abstention, Colorado River  
22 abstention is not based on weighty considerations of federal-state  
23 relations. Rather, Colorado River abstention is designed to  
24 promote ‘wise judicial administration.’ As a result, Colorado  
25 River abstention should only be used in ‘exceptional’  
26 circumstances.” American Int’l Underwriters, Inc. v. Cont’l Ins.  
27 Co., 843 F.2d 1253 (9th Cir. 1988) (quoting Colorado River, 424  
28 U.S. at 817-18). No such circumstances exist in this case.  
Moreover, “wise judicial administration” calls for this Court to

1 rule on the issues that have already been briefed and adjudicated  
2 before Judge Vadas in this case. Accordingly Chen's abstention  
3 arguments fail as a matter of law.

4 C. Eighth Amendment Claim

5 Finally, Chen argues that the Southern District of New York  
6 judgment is not enforceable against her because it constitutes an  
7 excessive fine in violation of the Eighth Amendment. However,  
8 Judgment Creditor does not seek to enforce the judgment against  
9 Chen. Rather, it seeks to enforce the judgment against Judgment  
10 Debtor Wang. Accordingly, Chen's Eighth Amendment claim fails as  
11 a matter of law.

12 II. Orders Issued by Judge Vadas

13 Chen's only arguments in support of her objections to Judge  
14 Vadas's reports and recommendations rely on her assertions that  
15 (1) she was not married to Wang at the time that they took title  
16 to the Dublin property in 2005; and either (a) she and Wang  
17 entered into an agreement at the time they took title that  
18 overrides the fact that they took title as husband and wife; or  
19 (b) the 2008 deed of trust granting the property to Ren and Chen  
20 precludes Judgment Creditor from obtaining the relief it seeks.  
21 As discussed above, the Court does not credit Chen's evidence that  
22 she and Wang were not married at the time they took title to the  
23 Dublin property in 2005. Moreover, the Court does not credit  
24 Chen's evidence that she entered into an agreement with Judgment  
25 Debtor in 2005 that effectively overrides the fact that they took  
26 title as husband and wife. Finally, California Code of Civil  
27 Procedure section 697.390 provides that, if an interest in real  
28 property that is subject to a judgment lien is transferred or  
encumbered without satisfying or extinguishing the judgment lien,

1 the interest transferred or encumbered remains subject to the  
2 lien. Accordingly, the 2008 deed of trust cannot extinguish the  
3 lien on the property.

#### 4 CONCLUSION

5 For the foregoing reasons the Court finds the Reports correct  
6 and adopts the Recommendations. Accordingly, the Court orders as  
7 follows:

8 (1) The United States Marshals Service, Northern District of  
9 California (the Levying Officer) is hereby enjoined, until further  
10 notice of this Court, from releasing, disposing, assigning, or  
11 otherwise transferring the real property commonly known as 2956 W.  
12 Castle Pines Terrace, Dublin, CA 94568 notwithstanding: (a) any  
13 other order issued by this Court to date; or (b) the provisions of  
14 Title 9 (Enforcements of Judgments Law) of Part 2 of the  
15 California Code of Civil Procedure; and/or (c) that Third Party  
16 Chen may file an undertaking pursuant to the concurrently issued  
17 Order Sustaining Objection to Undertaking.

18 (2) The \$10,000.00 undertaking filed by Third Party Chen on  
19 June 12, 2014 is determined to be insufficient.

20 On or before ten days from the date of this order, Third  
21 Party Chen shall file a new undertaking in an amount sufficient to  
22 bring the total undertaking to the sum of \$1,035,000.

23 Notwithstanding anything to the contrary herein and/or the  
24 provisions of Title 9 (Enforcements of Judgments Law) of Part 2 of  
25 the California Code of Civil Procedure, the order enjoining the  
26 Levying Officer from releasing real property shall supersede the  
27 terms of this order and the real property commonly known as 2956  
28 W. Castle Pines Terrace, Dublin, CA 94568 shall not be released

1 from the levy upon the filing of the undertaking by Third Party  
2 Chen as ordered herein.

3 (3) At the time Judgment Creditor Midland Innovations, NV  
4 created a judgment lien on real property by recording an Abstract  
5 of Judgment on January 14, 2008, the title to the real property  
6 commonly known as 2956 W. Castle Pines Terrace, Dublin, CA 94568  
7 held as "Wen Wang and Weiping Chen, Husband and Wife as Community  
8 Property with Right of Survivorship," reflected the actual  
9 ownership of and interests in the property. Judgment Creditor's  
10 lien attached to said interests and its lien is superior to any  
11 other interest acquired thereafter by Third Party Chen.  
12 Accordingly, the Third Party Claim of Weiping Chen, with respect  
13 to the real property commonly known as 2956 W. Castle Pines  
14 Terrace, Dublin, CA 94568, is denied.

15 (4) The real property dwelling commonly known as 2956 W.  
16 Castle Pines Terrace, Dublin, CA 94568, and legally described as  
17 LOT 16 OF TRACT MAP 7137 FILED FEBRUARY 26, 2004, IN BOOK 275 OF  
18 MAPS, PAGES 9 THROUGH 12, INCLUSIVE, OFFICIAL RECORDS OF ALAMEDA  
19 COUNTY, AS FURTHER DESCRIBED ASSESSOR'S PARCEL NUMBER: 985-0050-  
20 018, is not an exempt homestead. The Levying Officer is hereby  
21 authorized and is directed to sell this property. The sale of the  
22 Subject Property shall be governed by California Code of Civil  
23 Procedure section 701.510 et seq. and shall not be subject to the  
24 provisions of Article 4 (commencing with California Code of Civil  
25 Procedure section 704.710) of Chapter 4.

26 Upon sale of the property, the Levying Officer shall deposit  
27 the proceeds from the sale in the registry of the Court. The  
28 Clerk is directed to make the following distributions in the  
following priority to the extent funds are available: (1) the

1 Levying Officer's unadvanced costs; (2) Judgment Creditor's costs  
2 and interest accruing after issuance of the writ of execution for  
3 sale as claimed by Judgment Creditor; and (3) the amount due on  
4 the judgment with costs and interest.

5 IT IS SO ORDERED

6  
7  
8 Dated: November 21, 2014

  
CLAUDIA WILKEN  
United States District Judge